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| 09/494,643 | 01/31/2000 | Jean-Marc Halbout | SMS999-002 | 3730 |

7590 05/19/2004

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EXAMINER

WOO, RICHARD SUKYOON

| ART UNIT | PAPER NUMBER |
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3629

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/494,643

Applicant(s)

HALBOUT ET AL.

Examiner

Richard Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Prosecution Reopened

- 1) The indicated allowability of claims is withdrawn in view of the newly discovered reference(s) to Erol's Structure of Fees (Non Patent Literature). See Rejections based on the newly cited reference(s) later.

Drawings

- 2) New corrected drawings are required in this application because none of the drawings are deemed to be appropriate for publication. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

- 3) 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 4) Claims 12-14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claim merely manipulates an abstract idea without producing a "useful, concrete and tangible result". Because the "data structure" as claimed by Applicants is deemed to be the mere collection of a plurality of data matrix, which may not be

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considered as the readable medium, without showing any relationship between a plurality of matrix entries (first and second), the structure would not produce the useful, concrete and tangible result.

The data structure itself cannot be directed to a practical application of the invention in the useful art to accomplish a concrete, useful, and tangible result. When the data structure is actually executed by the computer or processor, the claimed subject matter produces a useful, concrete and tangible result. The recitation of "for each of a plurality of computer server system" cannot constitute the actual execution done by the computer system.

Claim Rejections - 35 USC § 102

5) Claims 1-2, 5-7, 10, 12-13 and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Erol's Structure of Fees (hereinafter Erol).

W.R.T. Claim 1:

Erol discloses a method for valuation of sever-based computer services for each of a plurality of computer server systems comprising the steps of:

assigning a capacity value for each computer server system (see generally Web Hosting for assigning a capacity value);

assigning a usage category for each computer server system (see Id. for personal, small office, etc.);

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· mapping the capacity value and usage category into a matrix (see the table of Web Hosting; the matrix is a pricing chart based on the server capacity that the customer is interested in and the customer's usage category); and

assigning costs based on location within the matrix (depending on which column the customer fits, a price is displayed in that row on the table (i.e. matrix)).

W.R.T. Claim 2: Erol further discloses the method, wherein the assigning a capacity value including assigning a value based on the size of the server system (e.g. 1, 5, 10, 15 MB storage in the table);

W.R.T. Claim 5: Erol further discloses the method including the step of calculating a capacity value from at least one previously-assigned capacity value; (see the table of Web Hosting; For example, if the user has been previously assigned 30 MB data transfer allowance/month but used 40 MB data, then 10 cents per MB over usage limit will be included in the final calculation of capacity value);

W.R.T. Claim 6: Erol further discloses the method, wherein the assigning of a usage category is based on the server application to be executed at each of the plurality of servers (personal, small office, home office or Plus);

W.R.T. Claim 7: Erol further discloses the method including the step of ascertaining at least one service support level (Inherently, Every ISP must ascertain at least one service support level to accommodate its customers); and

W.R.T. Claim 10: Erol further discloses the method, wherein the assigning of costs is conducted automatically (see table).

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W.R.T. Claim 12:

Erol discloses a data structure comprising (see generally table of Web Hosting):
a first plurality of matrix entries including a capacity value (see Id.);
a second plurality of matrix entries (see Id.); and
a plurality of costs assigned to the services (see Supra table).

W.R.T. Claim 13: Erol further discloses the structure including at least one service support level matrix entry (Inherently, Every ISP must ascertain at least one service support level to accommodate its customers); and

W.R.T. Claim 15:

Erol discloses a system for providing valuation of server-based computer services, comprising:

assignment component for assigning a capacity value for each computer server system (see table of Web Hosting);

a usage assignment component for assigning a usage environment for each computer server system (personal, home office, small office, etc.);

processor component for mapping the capacity value and usage environment (inherently, every ISP must have the processor component for mapping the value and environment); and

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cost processing component for assigning costs according to mapping (see the above cited Method Claims and how those claims are anticipated by Erol).

W.R.T. Claim 16:

Erol discloses a program storage device readable performing the method of steps of:

assigning a capacity value for each computer server system (see generally Web Hosting for assigning a capacity value);

assigning a usage category for each computer server system (see Id. for personal, small office, etc.);

mapping the capacity value and usage category into a matrix (see the table of Web Hosting; the matrix is a pricing chart based on the server capacity that the customer is interested in and the customer's usage category); and

assigning costs based on location within the matrix (depending on which column the customer fits, a price is displayed in that row on the table (i.e. matrix)).

Claim Rejections - 35 USC § 103

6) Claims 3-4, as far as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Erol in view of the Applicants' admitted prior art.

Erol discloses the invention as recited earlier, but does not expressively disclose the method including the steps of:

· assigning a capacity value including assigning a value based on the number of CPUs in the server system; and

assigning a capacity value including assigning a value based on published standards.

Applicants' admitted prior art (see generally pp. 7-9 in the specifications in this instant application) teaches, for a method for valuation of server-based computer services, that the published benchmark results are used to determine capacity units.

Accordingly, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to assign the capacity value including a value based on the published standards (including the number of CPUs in the server system), as taught by the Applicants' admitted prior art, for the purpose of determining the relative server system performance across various make and model types and vendors.

7) Claims 8-9, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erol.

Erol discloses the invention as cited earlier, but does not expressly disclose the limitations in Claims 8-9, 11 and 14.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to assign the service support level into the one of valuation factor of server-based computer services because Applicant

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has not disclosed that this additional mapping of the service support level into the matrix provides an advantage, is used for a particular purpose, or solves a stated problem.

One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with Erol because Erol and many ISPs have had their pricing guides based on the various services provided to the customer and the service support level should be obviously considered one of the services which Erol and many other ISPs would have provided.

Therefore, it would have been an obvious matter of design choice to modify Erol to obtain the invention as specified in claims.

Conclusion

8) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5,878,400 is cited to show a computerized pricing system tailored for each customer. Based on WHO is buying WHAT, the computer will parse through database record tables in a hierarchical fashion (i.e., generating a matrix based on WHO and WHAT criteria) to generate a price.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Woo whose telephone number is 703-308-7830. The examiner can normally be reached on Monday-Friday from 8:30 AM -5:00 PM.

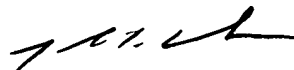
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.



Richard Woo
Patent Examiner
GAU 3629
April 29, 2004



JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600